

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 28 FEB 2005

WIPO PCT

Applicant's or agent's file reference 489060 AXH/rlp	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).	
International Application No. PCT/NZ2003/000244	International Filing Date (day/month/year) 31 October 2003	Priority Date (day/month/year) 1 November 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A61M 16/16		
Applicant FISHER & PAYKEL HEALTHCARE LIMITED (et al.)		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.


2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☒ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 07 MAY 2004	Date of completion of the report 21 February 2005
Name and mailing address of the IPBA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  MATTHEW FORWARD Telephone No. (02) 6283 2606

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	YES
	Claims 1-25	NO
Inventive step (IS)	Claims	YES
	Claims 1-25	NO
Industrial applicability (IA)	Claims 1-25	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1 US 6102037

D2 US 6050260

D3 JP 09-234247

D4 GB 2297914

D5 AU 14863/95

D6 US 2002/0100320

The present claims define a system comprising: 1) gases supply means providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient, 3) transportation means conveying said gases from said humidification means to said patient, and 4) sensing means to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means.

NOVELTY (N): Claims 1-25

D1 discloses a system comprising: 1) gases supply means providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (4), 3) transportation means conveying said gases from said humidification means to said patient (5), and 4) sensing means (9,91) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.

D2 discloses a system comprising: 1) gases supply means (15) providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (8), 3) transportation means conveying said gases from said humidification means to said patient (3), and 4) sensing means (11,12) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.

PCT/NZ2003/000244

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
EP 1329240 A1	23.07.2003	17.06.1998	17.06.1997
WQ 03/018096 A1	06.03.2003	15.08.2002	20.08.2001

EP 1329240 A1 discloses a system comprising: 1) gases supply means (1) providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (4), 3) transportation means conveying said gases from said humidification means to said patient (14), and 4) sensing means (17,18,19,32,34,35) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are new and do not involve an inventive step in view of this document as priority date of claims 1-16 have is earlier than publication date of EP 1329240 A1.

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of IV 1

WO 03/018096 A1 discloses a system comprising: 1) gases supply means (1) providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (2), 3) transportation means conveying said gases from said humidification means to said patient (3a), and 4) sensing means (5) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are new and do not involve an inventive step in view of this document as priority date of claims 1-16 have is earlier than publication date of WO 03/018096 A1

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of V

D3 discloses a system comprising: 1) gases supply means providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (6), 3) transportation means conveying said gases from said humidification means to said patient (2), and 4) sensing means (10,11) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.

D4 discloses a system comprising: 1) gases supply means (4) providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (22), 3) transportation means conveying said gases from said humidification means to said patient (16), and 4) sensing means (3) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.

D5 discloses a system comprising: 1) gases supply means providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (3), 3) transportation means conveying said gases from said humidification means to said patient (7), and 4) sensing means (12,13) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.

D6 discloses a system comprising: 1) gases supply means (1) providing a flow of gases, 2) humidification means receiving said gases from said gases supply means and capable of humidifying said gases up to a level of humidity prior to delivery to said patient (4), 3) transportation means conveying said gases from said humidification means to said patient (14), and 4) sensing means (17,18) to sense the humidity, temperature or other attributes of said gases flow, said sensing means contained within a housing that is releasably coupled in line between said humidification means and said transportation means. Claims 1-16 are not new and do not involve an inventive step in view of this document.